

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|   |   |                      |
|---|---|----------------------|
| In the Matter of the                          | ) |                      |
| Application of Verizon Maryland, Inc.,        | ) |                      |
| Verizon Washington, D.C., Inc.,               | ) |                      |
| Verizon West Virginia, Inc., Bell Atlantic    | ) |                      |
| Communications, Inc., (d/b/a Verizon          | ) | WC Docket No. 02-384 |
| Long Distance), NYNEX Long Distance           | ) |                      |
| Company (d/b/a Verizon Enterprise             | ) |                      |
| Solutions, Verizon Global Networks, Inc.      | ) |                      |
| And Verizon Select Services, Inc., for        | ) |                      |
| Authorization To Provide In-Region            | ) |                      |
| InterLATA Services in the States of Maryland, | ) |                      |
| West Virginia and the District of Columbia    | ) |                      |

**REPLY COMMENTS OF FIBERNET, LLC**

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**REPLY COMMENTS OF FIBERNET, LLC**

FiberNet, LLC (“FiberNet”), through its attorney, hereby files these reply comments in the above-captioned proceeding. FiberNet’s initial comments focused on a number of vitally important issues that highlight the absolute failure of Verizon West Virginia, Inc. (“Verizon-WV”) to fully and completely satisfy a number of the checklist items requisite for Section 271 authorization. In these reply comments, FiberNet will focus primarily on supplementing the record in several of the points made in FiberNet’s initial comments related to UNE DS-1 provisioning, Directory listings, UNE pricing and billing, dialing parity.

**I. Introduction**

As was noted in its initial comments, FiberNet provides local and long distance voice and data services to customers in West Virginia located within the service territory

of Verizon-WV. From a new start-up company, FiberNet has progressed to become the largest competitive local exchange carrier in West Virginia. While understandably proud of the progress it has made to date, FiberNet is not satisfied and is endeavoring to be a full service facilities based provider to all customers in West Virginia whether they be residential or business customers. To provide telecommunications services to both existing and prospective customers in an effective and responsible manner, FiberNet must be able to deliver its service offerings quickly, reliably and with as little disruption as possible. If FiberNet's service offerings cannot be delivered in a timely manner, is deemed unreliable or if the processes and provisioning of its service is rife with delay and uncertainty, this is sure to have serious competitively significant implications for not only FiberNet specifically, but also to the fledgling competitive local exchange market in West Virginia.

To meet its customer's demands, to implement the requirements of the Telecommunications Act of 1996, and to be able to deliver its service offerings in a competitively fair manner, FiberNet expects that Verizon-WV, its wholesale supplier of unbundled local loops, will hold up its end with respect to its obligations under Section 251 of the Act. Sadly, however, Verizon-WV has proven time and time again that it is unable, and indeed has no desire, to successfully implement systems, processes and procedures that would aid in the development of meaningful and robust competition in the local exchange market in West Virginia. Quite the contrary, whether through the withholding of reliable access to vital UNE DS-1 loops, by refusing to develop systems and processes capable of providing accurate directory listings, by refusing to provide competitors with dialing parity in certain EAS areas, by refusing to bring its UNE prices

into compliance with valid TELRIC pricing principles, or in the unduly complicated billing and dispute resolution procedures, the end result is the same – competitors’ costs of doing business are driven higher, the ability of competitors to compete effectively with Verizon-WV is hampered, and Verizon-WV is able to orchestrate the regulatory landscape in West Virginia in a concerted effort to stamp out competitive alternatives to citizens throughout the State of West Virginia.

## **II. Verizon-WV’s UNE Rates Are Not TELRIC Compliant**

In its initial comments, FiberNet discussed the implementation of the UNE rate Stipulation entered into by Verizon-WV, the Public Service Commission of West Virginia Staff, and the Consumer Advocate Division of the Public Service Commission of West Virginia. This UNE rate Stipulation was subsequently adopted by the Public Service Commission of West Virginia (“PSCWV”) in its Order and Consultative Report released on January 9, 2003.

Although the recently adopted UNE rates for Verizon-WV are trumpeted as offering a significant UNE rate reduction on an average basis, these UNE rate reductions are illusory, fall woefully short of the kind of comprehensive rate analysis absolutely needed in West Virginia, are not the product of a TELRIC-compliant cost presentation, and will do nothing to spur the development of meaningful local exchange competition in West Virginia.

As evidence of the illusory nature of the PSCWV approved UNE rate reduction, Verizon-WV does not lower any existing UNE rate, but simply shifts around certain wire centers into different Density Cells, and creates a new Density Cell 3 with a rate of \$35.00. This newly proposed \$35.00 rate is not supported by any specific cost

information. Nor has any evidence been presented by Verizon-WV to date that demonstrates that this newly proposed Density Cell 3 rate of \$35.00 is in fact TELRIC compliant.

Even if the PSCWV determined that the stipulated UNE rates adopted in West Virginia are within the “TELRIC range,” they are still too high to facilitate broad-based local exchange competition as a general matter, too high to permit CLECs a meaningful opportunity to compete in the residential marketplace in particular and, finally, too high to constitute anything other than a barrier to effective and sustainable competition in the local market in West Virginia.

Quite frankly, the UNE rates adopted by the PSCWV will do nothing to stimulate the development of meaningful local exchange competition in West Virginia. While the average 2-wire POTS loop in West Virginia does decrease from \$24.54 to \$20.18, under the UNE rate stipulation adopted by the PSCWV, UNE rates in Density Cell 1 and Density Cell 2 remain unchanged. If competitors are unwilling and unable to come to West Virginia to compete prior to the UNE rate stipulation recently adopted by the PSCWV, they certainly are not going to come to West Virginia in a post Section 271 environment in West Virginia. In short, if it was not economically feasible for competitors to come to West Virginia when the Density Cell 1 rate was \$14.49 and the Density Cell 2 rate was \$22.04 on an historical basis, there is absolutely no reason to believe that they will come to West Virginia in the future when the Density Cell 1 and Density Cell 2 rates remain unchanged.

Based upon the foregoing, the Commission should reject Verizon-WV’s request for Section 271 relief until it has reduced its UNE rates to more nearly reflect accepted

TELRIC pricing principles and to lower the rates presently imposed on competitors in West Virginia. Simply put, before approving Verizon-WV's bid for long distance authority, the Commission needs to see to it that Verizon-WV's current UNE rates are reduced to correct the over pricing that has occurred in West Virginia. This is absolutely necessary in order to achieve full and irreversible competition in West Virginia – a prerequisite for Verizon-WV's compliance with Section 271.

### **III. Verizon-WV's UNE DS-1 No Facilities Policy Continues To Harm Competition in West Virginia.**

Verizon-WV's steadfast unwillingness to modify its policies on UNE DS-1 provisioning continues to severely inhibit the development of meaningful local exchange competition in West Virginia. Make no mistake, Verizon-WV's failure to provision UNE DS-1 orders from FiberNet has and continues to have a significant adverse effect on FiberNet's ability to effectively compete for the small and medium sized business customers that make up the bulk of FiberNet's current customer base.

In its initial comments, FiberNet provided the Commission with a breakdown of the 191 UNE DS-1 orders for business customers placed with Verizon-WV through September 1, 2002. During this particular time period, FiberNet experienced a rejection rate on its UNE DS-1 orders of nearly 50%. Since that time, FiberNet's ability to successfully order and provision UNE DS-1s from Verizon-WV has not gotten better, and FiberNet continues to experience a higher than normal rejection rate on its UNE DS-1 orders. Thus, the conclusion here is inescapable that Verizon-WV is not interested in a level competitive playing field and is instead committed to exploit its monopoly position in West Virginia to demand arbitrarily high special access prices for the same

“construction” work that Verizon-WV willingly undertakes for its own customers. Obviously, Verizon-WV’s “no build” policy has absolutely nothing at all to do with “construction,” and everything to do with thwarting the little competition that exists in West Virginia through the imposition of abusive monopoly pricing.

The fact remains that in almost all circumstances the customer who requests CLEC services is an existing Verizon-WV customer, or is served over existing Verizon-WV loop and outside plant facilities, and that loop is fully capable of supporting DS-1 high capacity services with minor adjustments and conditioning to the existing loop. The problem, stripped of all the rhetoric, is that Verizon-WV does not believe that its UNE DS-1 pricing is high enough to recover its embedded costs.<sup>1</sup> This despite the fact that when Verizon-WV’s UNE DS-1 rates were established in West Virginia these rates included a spare capacity component that was specifically designed to allow Verizon-WV to make more UNE DS-1s available on a prospective basis.

Instead of going to the Public Service Commission of West Virginia (“PSCWV”) to institute a new UNE pricing proceeding, Verizon-WV figures that it may simply squeeze the CLEC community through its anti-competitive “no facilities” policy. When viewed in its proper context, the Commission can easily determine that this is merely another method to do indirectly what Verizon-WV has been unable to get the Commission or the Courts do to directly. The net effect is an unmitigated campaign to artificially drive up the costs to competitors as part of a strategy to drive competitors out of the market for business customers in West Virginia.

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<sup>1</sup> Verizon’s dissatisfaction with the TELRIC pricing regime and its relentless quest to recover its embedded, historical costs from CLECs in any way it can has been a source of constant litigation since the passage of the Telecommunications Act of 1996. See, e.g., *Verizon Communications Inc., et al v. Federal Communications Commission et al*, 122 U.S. 1696 (2002).



While the PSCWV has in part recognized the inherent unfairness of Verizon-WV's "no facilities" policy and has ordered a series of industry meetings to further explore this situation, the PSCWV's actions do nothing to address the ramifications of this clearly discriminatory and anti-competitive policy that have occurred to date. While FiberNet is certainly willing to participate in these PSCWV mandated discussions regarding the anti-competitive nature of Verizon-WV's "no facilities" policy, FiberNet and the few other CLECs actually providing service in West Virginia today require a more immediate fix. Thus, the buck stops here with the Commission. Consequently, the Commission must stop Verizon-WV's forced efforts to compel CLECs like FiberNet away from UNE DS-1s and to a higher priced special access products that currently lack performance reporting and any meaningful regulatory oversight. To do otherwise makes a mockery of Section 251's obligations to provide reasonable and non-discriminatory access to unbundled high capacity loops.

#### **IV. Verizon-WV's Directory Listings Processes Continue To Plague Competitors in West Virginia.**

FiberNet has adequately highlighted the flawed directory listings processes in its initial comments.<sup>2</sup> Verizon-WV's recent Ex Parte submission attempts to display that all is well and that the systems are in proper working order. Verizon-WV also pats itself on the back for its voluntary agreement to adopt the so-called Directory Listing Order Accuracy Metric (OR-6-04). However, as the Department of Justice recently noted in its evaluation of the instant Section 271 proceeding:

[a]lthough Verizon appears, for the most part, to meet or exceed the standard for relevant directory listings accuracy metric, this metric measures only one part of

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<sup>2</sup> FiberNet Comments of January 9, 2003 at pp. 46-55.

the upstream process of creating a directory listing. As in Virginia, however, no metric in Maryland, Washington D.C., or West Virginia measures accuracy at the subsequent production phases at which CLECs are complaining about errors.<sup>3</sup>

More importantly, as FiberNet and other CLECs have shown, it is the production phase of the Verizon-WV directory process that is riddled with inaccuracies and processing errors.

Despite the hopeful wishes of both this Commission and the PSCWV that Verizon-WV's promises will fix the problems inherent in its directory listing processes, the error rates for this downstream "production phase" of Verizon-WV's directory listing process continues to demonstrate startling irregularities. For example, as FiberNet pointed out in its initial comments, Verizon-WV created 1,229 errors that FiberNet was forced to detect and correct in the LVRs issued by Verizon-WV for the telephone directories that closed on or before September 2002 in West Virginia.<sup>4</sup> If FiberNet did not take the trouble to quality check these listings, these 1,229 errors would have likely found their way in the final directory publications.

Under any reasonable standard, more than a thousand errors just for FiberNet customers is an intolerable standard for the production phase of the directory listing process. Consequently, the Commission should not condone this shoddy service by succumbing to Verizon-WV's strategy to co-opt CLECs like FiberNet into the job of discovering and fixing Verizon-WV's problems so that it "appears" that the final product is the end result of flawless Verizon-WV processes, when in fact FiberNet has every right to refuse to even do this work for Verizon-WV (since FiberNet is not compensated for it now). FiberNet's quality checking is nothing more than a courtesy job for Verizon-WV,

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<sup>3</sup> WC Docket No. 02-384, United States Department of Justice Evaluation at pp. 8-9.

and a reflection of a complete lack of trust that Verizon-WV's LVR's will accurately satisfy FiberNet that its customer listings will appear as ordered.

Most distressing to FiberNet is the fact that several of its customers have had their directory listings either omitted entirely or incorrectly listed in the appropriate Verizon-WV telephone directory for **two consecutive years**. This occurred even after FiberNet submitted appropriate order supplements to Verizon-WV to make the necessary corrections to these customers' listings after said listings did not appear correctly the first time. For example, FiberNet was recently contacted by a customer wanting to know why the directory listings for two of her businesses (one located in Charleston and the other located in Beckley, West Virginia) had been incorrectly listed in the Verizon-WV telephone directory for the past two years. Upon investigation of this matter, FiberNet determined that it had submitted orders to Verizon-WV to correct the listings for this customer on several occasions. Unfortunately, however, these efforts were not successful, and this customer is now threatening to discontinue using FiberNet for local service unless FiberNet provides substantial credits on the customer's account in order to compensate for the directory listing errors.

As the Justice Department pointed in its evaluation of the Verizon-Virginia Section 271 application and again in its evaluation in the instant docket, "inaccuracies in directory listings caused by the regional BOC can result in substantial competitive harm" and, quoting the FCC, "irregularities involving white pages are a very serious matter because customers may tend to blame the new competitor, rather than the familiar

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<sup>4</sup> FiberNet Comments of January 9, 2003 at p. 51.

incumbent, for mistakes.”<sup>5</sup> Given the continued intolerable level of directory errors and omissions that are directly attributable to Verizon-WV’s internal processing of FiberNet’s directory orders, something must clearly be done, be done soon, and more importantly, be done prior to the approval of Verizon-WV’s Section 271 application.

Yet, Verizon-WV is inexplicably reluctant to even entertain any adjustments to its seriously flawed directory listing process. During the workshops held prior to the PSCWV hearings, FiberNet and other CLECs like StratusWave and NTELOS proposed alternatives that would have made the directory listing process more accurate and efficient. For example, it was suggested that CLECs be allowed to deal directly with the directory publisher, Verizon Information Services, when submitting customer listing information. NTELOS correctly pointed out that other ILECs in Virginia, NTELOS’ primary base of operations, deal directly with Verizon’s directory publisher, without the necessity to slog through an intermediate LVR process. Verizon-WV refuses to allow this, and evidently prefers to force CLECs into more inefficient and error-prone system that has, thus far, evaded meaningful regulatory scrutiny or critique.

Similarly, FiberNet specifically asked that Verizon-WV provide directory page proofs so that FiberNet could verify the accuracy of its customer’s listings as they were designed to actually appear in the involved Verizon telephone directory. Again, Verizon-WV simply refused this most reasonable suggestion without even the slightest consideration. Given Verizon-WV’s reluctance to implement any remedial measures that might increase the overall accuracy of CLEC directory listings, the only other alternative is to force Verizon-WV to immediately clean up its act, allow its directory listing

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<sup>5</sup> WC Docket 02-214, United States Department of Justice Evaluation at p. 7, quoting FCC Texas Order 358, and WC Docket 02-384, United States Department of Justice Evaluation at p. 9..

processes, which have to date not been tested end to end, a sufficient time for adequate testing all the way through to final production in the telephone directories, and then examine the results objectively to determine if they are indeed competitively neutral such that this vitally important competitive checklist item can be judged to be in present compliance without empty promises by Verizon-WV to implement fixes at a later date.

Moreover, FiberNet cannot even get Verizon-WV to respond to blatant problems with directory listings for its business customers. As FiberNet noted during the underlying PSCWV proceedings, business customers receive both a white page and a free yellow page listing, all off the same initial order inputted into the very same Verizon OSS that is under review in this proceeding. Although FiberNet is able to initiate the yellow page listing in Verizon-WV's OSS, through an LSR, Verizon's systems prohibit FiberNet from processing a change to that heading through the LSR later in the process. As a result, the business customer's listing is published inaccurately and the customer undoubtedly blames FiberNet for the error. In short, Verizon-WV provides FiberNet with no tool to test the validity of the yellow page listing or whether the listing is inputted as the customer desires. Naturally, Verizon-WV's pat answer to this problem is that yellow pages are not part of the Section 271 process, but white page and yellow page directory listings, especially for business customers, are both extremely important, and customers are just as upset when their yellow page listings do not appear correctly.

All of this simply compounds even further FiberNet's inability to verify the accuracy of the customers listings, further destroying a transparent and functional ordering relationship between the customer, its CLEC carrier and the wholesale provider of directory services – Verizon-WV. The Commission needs to put a halt to this

disruption to business customers' listings and require Verizon-WV to provide FiberNet with access to the OSS to process such changes and to test the accuracy of the listings through this "production" phase as well.

FiberNet does not know why Verizon-WV's systems continually break down and generate these unacceptable errors in what should be a relatively straightforward directory listings ordering process, but the manifestations of these breakdowns are felt daily. The fact remains that something is fundamentally wrong with Verizon-WV's directory listing processes. Again, dysfunction continues to be the hallmark of Verizon-WV's directory listing process, despite hollow promises to correct inadequacies and to do a better job in the future. The net result is that Verizon-WV still cannot provide FiberNet with an adequate wholesale directory listings product.

Until these problems are addressed, corrected, and have been thoroughly tested in a yearly cycle of directory listings publications, Verizon-WV cannot be said to be in compliance with the stringent standards set forth in Section 271(c)(2)(B)(viii) and Section 251(b)(3). At this point in time, Verizon-WV has not (i) provided CLECs with non-discriminatory appearance and integrations of white page directory listings to CLECs and (ii) provided white page listings for CLEC customers with the same accuracy and reliability that it provides to its own customers. As a result, the Commission should refuse to grant Verizon-WV's Section 271 authorization in West Virginia.

**V. Verizon-WV's EEL and M-Loop Ordering and Provisioning Processes Are Unreasonable and Discriminatory.**

As noted in its initial comments, FiberNet has had a difficult time in the ordering and provisioning of Expanded Extended Loops or EELs from Verizon-WV. Essentially,

an EEL consists of a combination of unbundled loops and unbundled interoffice transport, along with a multiplexer if the IOF and the loop are of different speeds. When FiberNet has been able to procure them, EELs have been especially beneficial to FiberNet's operations in West Virginia. Specifically, EELs are of benefit to FiberNet because FiberNet is able to purchase unbundled loops to provide local service to its customers, but does not have to incur the expense that would be necessary if FiberNet were to collocate in each end office serving those loops.

Although EELs were available in other jurisdictions within the Verizon footprint, until very recently, EELs were not available to CLECs in West Virginia as a UNE. As FiberNet noted in its initial comments, in order to procure an EEL from Verizon-WV historically, FiberNet had to order a special access circuit and then subsequently convert that circuit to an EEL. This was a burdensome and time consuming process that never worked particularly well, and is today still subject to on-going billing disputes between FiberNet and Verizon-WV.

Following the United States Supreme Court's decision in *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646 (2002), FiberNet's difficulties in ordering and provisioning EELs should have disappeared. However, this has not been the case and FiberNet has continued to encounter difficulties in ordering EELs from Verizon-WV. As FiberNet pointed out in its January 9, 2003 comments, FiberNet's initial attempts to place EEL UNE orders with Verizon-WV were rejected by Verizon-WV first on the basis that EEL UNEs could not be ordered in West Virginia and later due to "no facilities."

Since that time, FiberNet's track record in successfully ordering EELs from Verizon-WV has not improved. FiberNet constantly encounters problems in getting EEL

orders accepted and provisioned by Verizon-WV in a timely manner. The particulars of these problems change over time, but the fact remains that there always seems to be a problem. Undoubtedly, Verizon-WV's demonstrated inability to accept and provision FiberNet's EEL orders is a clear indication of Verizon-WV's non-compliance with Checklist Item 2. Unless and until Verizon-WV has clearly demonstrated an ability to accept, confirm and provision FiberNet's orders for UNE EELs in West Virginia, its application for in-region long distance operating authority in West Virginia should not be granted.

As noted in its initial comments, in addition to the difficulties FiberNet has encountered with getting Verizon-WV to simply accept its EEL orders, Verizon-WV's choice of OSS for the ordering of new EELs burdens FiberNet with unreasonable costs and anti-competitive delays. As noted earlier, an EEL consists of a combination of an interoffice facility ("IOF"), a loop or loops, and a multiplexer ("mux") if the IOF and the loops are of different speeds. If the IOF and the loops are of different speeds, Verizon-WV requires two separate orders, and therefore two separate order charges are applied. Moreover, Verizon-WV requires that these orders for the IOF and the loops be sequential. In other words, the IOF order must be completed and turned up before the corresponding loops can be ordered.

The problem with this process is that Verizon-WV begins charging FiberNet for the IOF as soon as it is turned up, even though the loops have not yet been ordered or provisioned. In FiberNet's experience, the intervals for the corresponding loop provisioning run as long as 15 business days, depending on the type of loop and the quantity ordered, assuming that the loop facility is available in the first place, which in



FiberNet's recent experience is often not the case. If the facility is not available, which happens frequently, and the order is rejected, the charges for the associated IOF and multiplexer continue to be assessed, and these costs can be substantial. In West Virginia, FiberNet is being charged \$47.53 for the IOF and another \$79.51 for the multiplexer. As a result, FiberNet incurs IOF and multiplexer charges from Verizon-WV long before it can actually use the underlying EEL to obtain revenue from its end user customer. In other words, FiberNet is left with stranded costs for the period during which end to end connectivity to the customer is not established. Moreover, FiberNet may be required to pay stranded costs for the IOF and the multiplexer for an even greater period of time if Verizon-WV is able to complete the IOF and multiplexer, but subsequently rejects FiberNet's corresponding loop order due to claims of "no facilities."

Because of these deficiencies in the EEL ordering process, the Maryland Public Service Commission recently required Verizon to adopt the simultaneous ordering process currently being used in Massachusetts.<sup>6</sup> Verizon-Maryland has agreed to comply with the Maryland PSC's directive to implement in Maryland the Massachusetts EEL ordering and billing process, and Verizon-WV is under a similar directive from the PSCWV.<sup>7</sup> However, upon information and belief, Verizon-WV has not as yet committed itself to implement the coordinated EEL ordering and billing process in West Virginia. Until Verizon-WV expressly agrees to implement this EEL ordering and billing process in West Virginia, it cannot reasonably be found to be in compliance with the requirements of the competitive checklist.

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<sup>6</sup> Maryland Public Service Commission, Case No. 8921, Letter of December 16, 2002, at 7.

<sup>7</sup> See "Commission Order and Consultative Report, January 9, 2003, Case No. 02-0809-T-P, at p. 68.

In sum, the current Verizon-WV EEL ordering process and the OSS supporting it is slow, expensive and inefficient for FiberNet's business purposes. Verizon-WV's processes create delays for the provisioning of critical new services to FiberNet's customers, and unreasonably subjects FiberNet to unavoidable stranded costs. As has been noted above, FiberNet incurs multiple charges for facilities in a piecemeal fashion, and it incurs them long before it can actually make use of the EEL in order to obtain revenue from its end user customer. When these deficiencies are combined, it is patently clear that Verizon-WV's current system is discriminatory and needs to be fixed prior to Section 271 approval. To its credit, the PSCWV has come to this realization as well and has ordered Verizon-WV to implement the coordinated EEL ordering and billing process. However, Verizon-WV has yet to affirmatively accept this requirement from the PSCWV, and until it does, the Commission should not approve Verizon-WV's Section 271 application.

### **M-Loops**

Also in its initial comments, FiberNet pointed out that Verizon-WV committed to working with FiberNet to develop a process involving the reuse of existing resale loops or Verizon-WV retail loops when said loops were converted by FiberNet to voice grade EEL M-loops.<sup>8</sup> Specifically, Verizon-WV expressly committed to develop a process so that such a move could be accomplished as a coordinated hot-cut.<sup>9</sup> In its initial comments, FiberNet asserted that Verizon-WV had continued to move away from its initial commitment on M-Loop utilization by imposing substantial limitations and

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<sup>8</sup> An M-Loop is designed to function much the same as an EEL. With an M-Loop, FiberNet would order a DS-1 facility from Verizon-WV. FiberNet would then break down each of the 24 channels associated with the DS-1 to the DS-0 level for use as individual loops to serve end user customers.

<sup>9</sup> See Checklist Rebuttal on Behalf of Verizon West Virginia, Inc., Paragraphs 94-95.

requirements that were arbitrary, unreasonable and reflective of Verizon-WV's anti-competitive behavior.

Unfortunately, the M-Loop process has not gotten better, and in some respects, has actually gotten worse. For example, Verizon-WV continues to insist upon the 13-day interval for order completion of M-Loops that reuse the existing facility from Verizon-WV's wire center to FiberNet's end user. As mentioned in FiberNet's initial comments, this represented a significant increase from the 8-day interval that Verizon-WV initially proposed for M-Loop order completion. Since the normal time interval for a loop and number port ("LNP") on POTS lines is 6 days from order entry to completion, the 13-day interval (or even the initially proposed 8-day interval) is still, in FiberNet's view, unusually lengthy, burdensome and substantially dilutes the overall value of the M-Loop product.

In addition to the unreasonable provisioning delay, Verizon-WV continues to limit the number of conversions it will process for FiberNet on a daily basis. This limitation is likewise arbitrary and unreasonable. First, Verizon-WV initially informed FiberNet that it would process only 8 lines per day. This continued from November 27, 2002 through December 19, 2002. After FiberNet pressed Verizon-WV to up the number of daily conversions, Verizon-WV finally agreed to allow up to 15 conversions per day, however, the additional 7 conversions had to be from a different central office than the first 8 conversions. This continued from December 20, 2002 through January 6, 2003. When Verizon-WV refused to increase the number of conversions from 15, FiberNet filed a motion with the PSCWV on December 18, 2002 requesting that the PSCWV revisit this issue in the context of Verizon-WV's Section 271 docket. Verizon-WV

responded by increasing the number of conversions that could be done per day from 15 to 24. This started on or about January 6, 2003 and has continued through to the present.

The aforementioned order completion interval of 13 days coupled with Verizon-WV's decision to limit to 24 the number of lines that can be processed per day will extend FiberNet's schedule for completion of this M-Loop conversion project to the beginning of March 2003, resulting in substantial additional costs to FiberNet. In addition to the backlog of conversions that FiberNet is attempting to work through using the M-Loop process, Verizon-WV's restrictions and limitations on the use of the M-Loop has caused FiberNet to discontinue counting on this product to provide service to new customers until the backlog of existing orders has been cleared. This is completely unfair to FiberNet and is clearly an unacceptable anti-competitive action by Verizon-WV.

Looked at another way, FiberNet was hoping to use the M-Loop product to potentially provide service to residential customers in West Virginia that could previously be reached only through resale. Using the Department of Justice's figure of 621,040 potential residential customers within the Verizon-WV service territory<sup>10</sup>, and using Verizon-WV's M-Loop limitation of 24 lines per day, if FiberNet were to achieve a desired penetration rate of 20% in the residential market in West Virginia, it would take FiberNet over 21 years to get to that figure.<sup>11</sup>

In short, despite Verizon-WV's assurances during the underlying state Section 271 proceedings that this M-Loop conversion process would be implemented in a

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<sup>10</sup> See Evaluation of the United States Department of Justice, January 27, 2003, at p. 7.

<sup>11</sup> FiberNet's calculation assumes that there is an average of 20 work days per month totaling 240 work days per year. If FiberNet converts the maximum of 24 loops per day currently permitted by Verizon-WV for the M-Loop product, FiberNet would be able to reach 5,760 residential customers per year. In order to achieve the desired residential penetration rate of 20% in West Virginia or 124,208 customers, it would take FiberNet nearly 21.6 years.

relatively short period of time, FiberNet has seen this process regress rather than progress since its inception. As noted in its initial comments, the additional time now being required by Verizon-WV to successfully provision M-Loops will essentially destroy FiberNet's planned resale to M-Loop conversion schedule. As of the date of this filing, FiberNet has only been able to successfully convert 375 lines using the M-Loop process. On the other hand, FiberNet has approximately 1,100 lines ready to be converted, but due to Verizon-WV's unreasonable provisioning interval, FiberNet will not only be unable to meet its desired conversion schedule, but it will also be perpetually backlogged on a going forward basis if it continues to use the M-Loop product to provide service to new customers. This is especially significant due to the substantial cost FiberNet incurs while maintaining loops on resale as opposed to converting these loops to on-net M-Loops. As a result, any delay encountered during the conversion process for these loops works to FiberNet's financial detriment.

Not surprisingly, Verizon-WV's actions, or lack thereof, in the M-Loop ordering and conversion process are the same actions that FiberNet constantly experiences in its dealings with Verizon-WV, i.e. arbitrary additional or new requirements, "operational" difficulties that delay the provision of service to FiberNet customers, and slow response time by Verizon-WV personnel in dealing with issues raised by FiberNet. Much like the discussion on EEL ordering, Verizon-WV needs to be held accountable for its failure to live up to the commitments it made during the underlying West Virginia state Section 271 proceeding. Verizon-WV promised FiberNet and the PSCWV that it would work faithfully on a new process to utilize the M-Loop for cases in which FiberNet wished to move its customers from resale to on-net facilities using existing customer facilities.

However, Verizon-WV has to date failed to make good on these promises. Verizon-WV should not be rewarded for this failure through the approval of its Section 271 application. Thus, until Verizon-WV is able to implement measures to make the M-Loop product successful, it should not be authorized by the Commission to provide in-region long distance service in the State of West Virginia.

#### **VI. Verizon-WV's Billing and Dispute Resolution Procedures Are Flawed.**

In its initial comments, FiberNet detailed the numerous and continuous billing and dispute resolution problems it experiences with Verizon-WV.<sup>12</sup> FiberNet stated that it routinely finds errors in the billing it receives from Verizon-WV, and that while some of the errors appear to be merely due to incompetence, other errors appear so regularly as to suggest a pattern of discriminatory and anti-competitive behavior. As an example, Verizon-WV has granted FiberNet disputes regarding certain issues, but continues to bill FiberNet for the same items incorrectly going forward thereby forcing FiberNet to dispute the same issues month after month.

Verizon-WV will often continue billing for service to an end-user after that end-user has been disconnected, frequently for up to five or seven business days after disconnection. FiberNet has also experienced numerous instances in which disputes are submitted to Verizon-WV, but Verizon-WV fails to assign a claim number. FiberNet has had to submit approximately 172 separate billing disputes to Verizon-WV not once but on several occasions because Verizon-WV “claimed” to have no record of the disputes having been submitted in the first place. Even when claim numbers are indeed assigned, disputes are still not resolved in a timely manner or in some cases, they are not resolved

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<sup>12</sup> See FiberNet, LLC Comments of January 9, 2003 at pp. 34-43.

at all. In other cases, disputes are resolved in FiberNet's favor, but Verizon-WV fails to credit FiberNet's account accordingly, and even when bill credits eventually show up on FiberNet's wholesale bills, these bill credits are documented as a lump sum with no itemization or explanation as to what the credit is actually for.

As a general proposition, Verizon-WV has not been responsive to FiberNet's requests for billing adjustments. Admittedly, as a result of the workshops held prior to the hearings before the PSCWV, Verizon-WV focused more attention on FiberNet's billing disputes. At the October 23, 2002 workshop, Verizon-WV represented that it had in fact issued approximately \$1.2 million billing dispute credits to FiberNet; however, FiberNet later determined that these billing credits corresponded to disputes separate and distinct from the specific ones identified by FiberNet during the state Section 271 process.

Despite trying to deal in a commercially reasonable manner with Verizon-WV's dispute resolution team, FiberNet has found that issues and dollar amounts being discussed with the Verizon-WV dispute resolution personnel are apparently not being communicated to VerizonWV's billing and collections personnel. As a result, while a particular billing dispute is being addressed with the dispute resolution arm of Verizon-WV, FiberNet continues to receive bills from Verizon-WV containing these same disputed charges. FiberNet has in fact received letters from Verizon-WV's collections department in which Verizon-WV threatens to cut off the provision of wholesale services to FiberNet on a prospective basis due to perceived outstanding account balances directly associated with these billing disputes. Verizon-WV refers to this process as an "embargo" while FiberNet believes "coercion" would be a more appropriate word.

Verizon-WV has substandard billing practices, including, but not limited to, back billing, inaccuracies and manual processes. For example, Verizon-WV has back billed FiberNet in some instances for wholesale charges that are 2 years old. To make matters worse, Verizon-WV manually places charges on FiberNet's bills and then provides a spreadsheet as support for these charges, a method that is excessively burdensome for FiberNet and only serves to prolong an already lengthy and unreasonable claims and dispute resolution process. While Verizon-WV claims that CLEC billing disputes are handled within 30 days, FiberNet's real world experience has shown that the resolution of the vast majority of its disputes extend well beyond the target 30 day window and requires numerous telephone calls and/or e-mails in order to resolve even the most basic of claims.

FiberNet also continues to experience "double billing" problems. Double billing is Verizon-WV's continued billing of customers for service periods after those customers have switched their local telephone service to FiberNet. Double billing has historically been a big problem for FiberNet, and has afflicted FiberNet's customers since at least January 2000. Although in some respects the double billing problem has gotten better, it often takes several attempts to get double billing problems successfully cleared. For example, following Verizon-WV's initial determination that no double billing was occurring for a particular FiberNet customer, FiberNet supplied Verizon-WV with a copy of the confirmation showing that the customer had indeed migrated service to FiberNet. After receiving this information from FiberNet, Verizon-WV "discovered" that it had



been double billing over 35 lines to this customer in the amount of \$1,400.00 per month from May 2000 until August 2002.

In addressing double billing situations, Verizon-WV sometimes refers the double billing inquiry to a “specialist.” In these situations, FiberNet is invariably required to initiate a follow-up to determine the status of the referred account. Further, Verizon-WV is not pro-active in letting FiberNet know what the “specialist” finds during his/her research of a particular customer account. Once the proper adjustments to the customer’s Verizon-WV bill are finally made, they are manual adjustments that appear on the customer’s bill as a “miscellaneous” credit, and the customer does not know if the credit being received relates to a double billing problem or to some other problem.

It is also not unusual for Verizon-WV to generate a termination notice to the customer being double billed. In fact, termination notices often go out to customers that Verizon-WV knows are the subject of a double billing inquiry. This situation is especially troubling in cases involving a resale customer, where the customer’s number actually resides in the Verizon-WV switch and could conceivably be terminated by Verizon-WV while the double billing issue is still being investigated.

Because the correction of the double billing problem is entirely within the control of Verizon-WV, the Commission should be assured that Verizon-WV has implemented steps to adequately measure and compensate CLECs for all legitimate double billing occurrences before Verizon-WV is permitted to enter the long distance market in West Virginia. Undoubtedly, double billing is an anticompetitive practice, whether intentional or not, and FiberNet should not be burdened with having to take extraordinary measures month after month in an effort to remedy a situation created by Verizon-WV mistakes.

To be sure, these billing problems and disputes have a substantial, adverse impact on FiberNet. Given the significant financial amounts involved in these billing disputes, especially for a small start-up company like FiberNet, Verizon-WV's delay in resolving disputed bills weakens the financial integrity of FiberNet. FiberNet must keep accruals to cover potential payments if the disputes are not resolved in its favor – funds FiberNet would like to employ in making further capital expenditures in West Virginia. FiberNet has had to hire additional personnel in order to audit, evaluate and oftentimes correct Verizon-WV billing inaccuracies, and unless Verizon-WV's billing and dispute resolution process improves dramatically on a prospective basis, it may very well be necessary for FiberNet to hire additional dedicated personnel just to work on evaluating and reconciling Verizon-WV's wholesale bills.

### **BOS-BDT**

Although Verizon-WV now transmits some bills electronically in the BOS-BDT format, rather than as paper bills, it has only been several months since Verizon-WV allowed CLECs in West Virginia the option of selecting the BOS-BDT version of the wholesale bill to be the "official bill of record." Thus, FiberNet has still had to contend with the voluminous paper bills, which cannot be readily audited or validated. Even with respect to these electronic bills, FiberNet has had extensive problems with Verizon-WV in obtaining assistance to access and read the electronic bills and has generally found Verizon-WV personnel to be difficult and unhelpful.

Neither can the Commission rely upon the BOS-BDT electronic billing option because the BOS-BDT process has never been adequately tested. While KPMG tested Verizon's OSS as part of the recently concluded Virginia Section 271 proceeding, the

KPMG test in Virginia did not include testing of electronic bills, and did not examine billing disputes, queries or instances of back billing. KPMG's limited evaluation of Verizon's billing procedures and bills do not properly reflect real world CLEC experiences with Verizon's various billing processes and procedures, and are certainly not indicative of FiberNet's past experiences in trying to maneuver through the morass otherwise known as the Verizon billing and dispute resolution processes.

Indeed, the major problem with Verizon's electronic billing – in West Virginia, Virginia Maryland, and presumably, the District of Columbia as well -- is that the systems and processes have never been closely scrutinized – not in any of the these jurisdictions.<sup>13</sup> In Virginia, KPMG tested the paper bill of its pseudo CLEC. KPMG did not test the BOS-BDT because it was outside the scope of the Virginia test entirely. KPMG only tests the “bill of record” and the paper bill was the bill of record during the test in Virginia. By not designating the BOS-BDT the bill of record until June 1, 2002, Verizon VA was assured that it would be outside of the scope of the KPMG test. There is a pattern that in Verizon states where this has been an issue, Pennsylvania, New Jersey and Virginia, the BOS-BDT did not become the bill of record until right after the completion of the KPMG test.

Instead of allowing the electronic bill to be tested by KPMG in Virginia, Verizon VA retained PwC to assess electronic billing. Verizon-WV is relying on the KPMG Virginia test of the pseudo CLEC paper bills for accuracy and the PwC attestation in West Virginia that the paper bills and the BOS-BDT bills are the same. PwC, the only

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<sup>13</sup>KPMG did note that they did a limited test of BOS-BDT in Pennsylvania that only consisted of making sure the bills were in a particular format. Maryland PSC Case No. 8921, Tr. at p. 1309.

party who reviewed West Virginia bills, testified that it only looked at the sameness of the systems not whether the systems actually worked.<sup>14</sup>

It is evident from the declaration that PwC filed in the West Virginia state proceeding that PwC did not “test” the BOS-BDT for accuracy or completeness, but rather merely conducted a review of Verizon WV’s management assertions about its electronic billing systems. PwC indicated that if there was a problem with the accuracy of the paper bills there would also be a problem with the accuracy of the electronic bills, and PwC’s review would not necessarily detect the problem, and that an error in Virginia would be an error in West Virginia.<sup>15</sup> Thus, if the paper bills that PwC were reviewing were inaccurate, so long as they matched the electronic bill, it was not relevant, detected or reported by PwC.

PwC in its comparison of the paper bill of actual CLECs to the electronic bill looked to see if the bills were the same and if they were able to be recalculated by a third party. PwC **could not** conclusively affirm either point without exceptions.<sup>16</sup> Verizon-WV asserts that the paper bill is simply a printout of the electronic bill and therefore testing of the electronic bill is not really necessary. However, FiberNet does not believe that such is the case. In fact, PwC indicated that Verizon-WV has a Quality Review and Adjustment process in place to make sure the electronic bill and the paper bill match when they “go out the door” and that a certain percentage of BOS-BDT bills have to have balancing records inserted into them to make them match the paper bills. If the paper bill is simply the printout of the electronic bill then there should be no differences and no need for balancing records.

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<sup>14</sup> PSCWV, Case No. 02-0809-T-P, Hearing Transcript, Volume I, p. 62.

<sup>15</sup> Id., pp. 64-65.

One of the Verizon-WV assertions that PwC was unable to verify without exception was the ability of a third party to recalculate the BOS-BDT. PwC concluded that in certain instances they were not able to recalculate some of the bill elements. PwC only attempted to recalculate a sample, not all, of the bill elements, and if it had to refer to another source (i.e. a USOC) to recalculate the bill element it did not check to see if the source referenced was accurate and complete --- that was outside the scope of the “test”.

In conclusion, the Commission should rightly be concerned about the lack of testing of Verizon-WV’s billing system and the significant and continuous billing problems that CLECs like FiberNet are experiencing on a daily basis. Simply put, there is no reason that an operations system of the size, complexity and sophistication of Verizon-WV’s cannot provide prompt, efficient and accurate billings and billing dispute resolution to CLECs. Unless experienced first hand, it is difficult to appreciate the frustration of the CLECs to have to continually file claims, have significant dollar amounts in dispute for long periods of time, and receive bills without significant detail to allow the CLEC to verify credits. These difficulties result in the CLECs having to expend a great deal of time and effort to make sure that Verizon-WV is billing correctly and following through on issuing credits. Moreover, the Commission should be particularly concerned about “back-billing” by Verizon-WV. While it may be understandable that there may be times when Verizon-WV inadvertently fails to issue proper bills to a CLEC, it is patently unreasonable for Verizon-WV to “back-bill” the CLEC for months beyond the actual date in which the involved wholesale services were actually utilized.

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<sup>16</sup> Id., p. 60.

Based on this evidence of Verizon-WV's discriminatory and anti-competitive practices against FiberNet and other CLECs in West Virginia Verizon-WV cannot be found to be providing competitors with nondiscriminatory access to OSS in compliance with checklist item 2. Thus, the Commission should not support Verizon-WV's 271 filing until (1) Verizon-WV has affirmatively demonstrated that it has resolved all of FiberNet's billing and other associated problems evidenced in this matter; and (2) the billing operations functions and billing claims processes of Verizon-WV's OSS are adequately tested and evaluated as part of a comprehensive West Virginia specific OSS test.

**VII. Verizon-WV's Continues To Refuse To Provide Dialing Parity to CLECs In Recognized EAS Areas Between West Virginia and Ohio.**

Section 271(c)(2)(B)(xii) of the Act, Section 12 of the competitive checklist, requires Verizon-WV to provide "nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3).<sup>17</sup> Specifically, Section 251(b)(3) imposes upon all LECs the duty to provide "dialing parity" to competing carriers with no unreasonable dialing delays. The rules subsequently established by the FCC to implement Section 251(b)(3) provide that customers of competing carriers must be able to make a local call by dialing the same number of digits the RBOC's customers dial to complete a local telephone call.

As FiberNet pointed out in its initial comments, in certain border areas of West Virginia, Verizon-WV customers are permitted to make local calls across LATA boundaries into Ohio, Pennsylvania, Kentucky, Maryland and Virginia. These cross-

LATA local calling areas were “grandfathered” as an exception to the general prohibition on RBOC provision of interLATA service to permit provision of certain Extended Area Service (“EAS”) across LATA boundaries.<sup>18</sup>

In instances where Verizon-WV customers make and receive calls within these overlapping interLATA EAS local calling areas, these calls are carried, completed and charged as local calls. However, CLEC customers in border areas like Huntington, Parkersburg, Wheeling and Weirton, initially could not call into these recognized interstate EAS areas without having their calls unilaterally blocked by Verizon-WV, and eventually only by dialing these calls as long distance. On the other hand, Verizon-WV customers in the identical circumstances were able to complete these calls on a local basis.

Under the terms of its certification from the PSCWV, FiberNet’s is required to mirror the local calling areas of Verizon-WV, including those EAS areas expressly recognized and detailed in Verizon-WV’s local exchange tariffs and telephone directories. However, Verizon-WV has refused to allow FiberNet customers being served on a facilities basis in these border EAS areas to make and complete calls on a local basis to corresponding EAS exchanges located in adjoining states. However, Verizon-WV customers in the identical situation within the overlapping interLATA EAS local calling areas are able to complete these calls as local. FiberNet customers had their calls unilaterally blocked by Verizon-WV and in order to complete what should have been a local call were required to call 1+ the local number.<sup>19</sup>

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<sup>17</sup> 47 U.S.C. § 271(c)(2)(B)(xii)

<sup>18</sup> United States v. Western Electric Co., 569 F. Supp. 990, 1002 (D.D.C. 1983).

<sup>19</sup> In order to initially “work around” this situation, FiberNet was compelled to route these “local” calls to an interexchange carrier for completion. This particular “work around” started in October 2000 and

In the Huntington, West Virginia area, Verizon-WV eventually proposed a “work around.” FiberNet agreed to purchase an interstate special access DS-1 facility from Verizon-WV to a meet point of the ILEC on the Ohio side of the border. In this specific example, the ILEC on the Ohio side happened to be Verizon North. FiberNet similarly agreed to order a DS-1 facility from Verizon North in Ohio and also agreed to enter into a traffic termination agreement with Verizon North in an effort to make this arrangement work. Verizon-WV was willing to facilitate this “work around” because the ILEC on the Ohio side was another Verizon company. The same problems exist in Parkersburg, Wheeling and Weirton, West Virginia, but the ILEC in Belpre, St. Clairsville and Steubenville, Ohio is Ameritech/SBC, which makes the proposed Verizon-WV “work around” solution even more cumbersome and difficult to implement.<sup>20</sup>

Moreover, FiberNet is not the only CLEC in West Virginia being adversely impacted by Verizon-WV’s anti-competitive policy. StratusWave, a CLEC serving in the Wheeling-Woodsdale area, testified in the underlying PSCWV hearings that it, too, has experienced problems similar to FiberNet. Specifically, StratusWave stated that Verizon-WV would not carry certain local calls made from a customer originating the call on the StratusWave network, but that the same call originating on the Verizon-WV network

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continues to be used today in the Parkersburg, Weirton and Wheeling exchanges . To date, FiberNet has incurred approximately \$560,000 in expense consisting of payments to interexchange carriers and miscellaneous associated costs in order to allow its customers to have dialing parity with similarly situated Verizon-WV customers. FiberNet believes that as a condition of Verizon-WV’s entry in long distance in West Virginia that it be required to reimburse FiberNet, StratusWave, NTELOS and any other CLECs that have been adversely impacted by Verizon-WV’s anti-competitive call blocking actions in these recognized interstate, EAS areas.

<sup>20</sup> FiberNet has literally been attempting to implement this “work around” with Verizon-WV and SBC/Ameritech in Parkersburg, Weirton and Wheeling, West Virginia since October 2001, and it has still not been successfully implemented in any of these West Virginia exchanges.



would be delivered. Thus, StratusWave was forced to reroute these local calls to an alternative carrier for delivery and incurred increased charges.<sup>21</sup>

The issue on this competitive checklist item is dialing parity of a Verizon-WV customer making an interLATA EAS local call and a CLEC customer making the exact call. Inarguably, Verizon-WV does not provide dialing parity in this situation, but unilaterally blocks the CLEC customer call. The CLEC customer is then required to either make a long distance call or the CLEC is required to implement to a “work around” which proves costly to the CLEC and profitable to Verizon-WV as demonstrated by Verizon-WV’s witness Don Albert’s admissions during the PSCWV hearings:

Q. “Who gets paid for FiberNet’s solution that you just described?

MR. ALBERT: In the solution FiberNet basically buys transport, a chunk of that from Verizon and a chunk of that from Ameritech and that transport is used to directly connect FiberNet’s switch to Ameritech’s switch.”

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Q. “But there are charges incurred and payments made to Verizon; is that correct?

MR. ALBERT: For the chunk of the transport that Verizon provides and then you also would pay Ameritech for the chunk of the transport that they provide.

Q. We pay Verizon on the West Virginia side and Ameritech on the Ohio side in order to make these local calls? (emphasis added).

MR. ALBERT: Correct.”<sup>22</sup>

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<sup>21</sup> See, PSCWV Case No. 02-0809-T-P, StratusWave Exhibit 1, Testimony of Howard R. Irvin, III, on behalf of Gateway Telecommunications, d/b/a, StratusWave at p. 9

<sup>22</sup> See, PSCWV Case No. 02-0809-T-P, Hearing Transcript, Volume III, P. 236, November 8, 2002.

As noted previously, Section 271(c)(2)(B)(xii) of the Act requires Verizon-WV to provide nondiscriminatory access to local dialing parity in accordance with the requirements of Section 251(b)(3). FCC rules implementing Section 251(b)(3) provide that customers of competing carriers must be able to make a local call by dialing the same number of digits that a Verizon-WV customer makes to complete a local call. Verizon-WV refuses to provide this parity without an expensive network “work around.” Thus, facilities-based CLECs like FiberNet are forced to scramble around to find a solution to a problem initiated solely by Verizon-WV in an effort to provide customers in these areas with the same calling scope and dialing parity being utilized by Verizon-WV’s customers.

FiberNet strongly believes that it should not be forced by Verizon-WV to implement these network work arounds, and because Verizon-WV has made this decision to unilaterally block FiberNet’s customers from being able to place direct dial calls on a local basis to these recognized EAS areas, it simply cannot be judged to be in compliance with the dialing parity requirements of the Telecommunications Act as contained in Checklist Item 12. Amazingly, Verizon-WV offers no legitimate authority for its position, and in fact, Verizon-WV stands to benefit directly from its policy since extra services must be acquired from Verizon-WV at substantial cost in order for CLEC customers to secure local dialing parity in these recognized interstate EAS areas. This is certainly not what the authors of the Act, or this Commission, could possibly envision as promotion of local exchange competition.

As demonstrated by Verizon-WV’s ex parte submission in this docket, and by Verizon-WV Don Albert’s cross-examination in the PSCWV hearings, rather than

justifying the EAS decision in the Huntington area by rule or regulatory decision, Verizon-WV relies on an “agreement” of NTELOS, FiberNet and itself:

Q. “If you block FiberNet customers from being able to place direct dialed local calls to recognized EAS areas between West Virginia and bordering states, do you consider that to be dialing parity?

MR. ALBERT: Yes, because I believe the solution that we had agreed to when we worked on it with Staff and with Ntelos and with FiberNet, . . .”<sup>23</sup>

However, as FiberNet’s explained in its initial comments, in order to serve its customers in the Huntington area (and other cross-border local areas) it was essentially forced to enter into a costly “work around” solution due solely to actions unilaterally taken by Verizon-WV.<sup>24</sup> That temporary agreement cannot operate to thwart the plain meaning, and purpose, of the Act. Verizon-WV must be directed to stop unilaterally blocking on-net CLEC customer calls from being completed on a local basis to these recognized interstate EAS areas prior to being granted long distance operating authority in West Virginia.

Under any objective analysis of this particular checklist item, the inescapable conclusion is that the Act’s plain meaning requires local dialing parity, that local dialing includes direct dialing to recognized EAS areas between West Virginia and bordering states, and that Verizon-WV’s blocking of these types of calls from CLEC customers constitutes non-compliance with Checklist Item 12. Furthermore, it is clear that Verizon-WV’s recommended solution, which was developed in 2001 to allow a network “work around,” is not a substitute for compliance with this checklist item. Therefore, until

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<sup>23</sup> See, Case No. 02-0809-T-P, Verizon West Virginia, Inc., Hearing Transcript Volume III, pp. 231-232, November 8, 2002.

<sup>24</sup> FiberNet, LLC Comments dated January 9, 2003, at p. 60.

Verizon-WV unblocks CLEC codes so that CLEC customers being served on a facilities basis are able to place direct dialed calls on a local basis to recognized interLATA EAS areas without extra cost to the CLEC, and promptly refunds to FiberNet and other similar situated CLECs the costs incurred in attempting to “work around” Verizon-WV’s discriminatory and anti-competitive practice, Verizon-WV can not be deemed to be in compliance with the local dialing parity requirements of the Act.

**VIII. Verizon-WV Has Continued To Use Its Monopoly Position in West Virginia To Prevent Competitors From Selling Service to the State of West Virginia.**

With the advent of the Telecommunications Act of 1996, new service providers like FiberNet, fully capable of providing advanced telecommunications services and products, entered the marketplace in West Virginia. While entry into the competitive local telecommunications market in West Virginia has not been as robust as it should have been due to a variety of factors, the few new service providers like FiberNet that presently operate in West Virginia stand ready to provide a wide array of advanced telecommunications services at competitive prices to not only individual customers and businesses, but also to state and local governments in West Virginia. All these service providers require is a level playing field and a meaningful opportunity to compete for this type of business. However, a level playing field has been difficult to achieve in West Virginia due to Verizon-WV’s actions, especially as it relates to selling telecommunications services to the State of West Virginia.

Without a doubt, the State Government represents the largest telecommunications business customer in West Virginia. Understandably, FiberNet has attempted to sell telecommunications services to the State, and to a limited degree, has been successful in this venture. However, FiberNet and other competitive carriers have not been able to

achieve the successes that they should have been able to achieve due to the undue influence asserted by Verizon-WV. Rather than to take advantage of the significant cost savings available through the service offerings of competitive providers, Verizon-WV has used its monopoly status to continually and consistently reinforce the reluctance of West Virginia state government agencies and purchasing administrators to consider non-Verizon-WV alternatives for telecommunications and advanced services. The inability of competing providers like FiberNet to gain access to this critically important market has permitted Verizon-WV to use its monopoly power in ways that ultimately discourage and impede private investment in facilities that could deliver service more economically to state and local government entities in West Virginia.

In its experience, FiberNet has on more than one occasion found individual State governmental or educational entities who were willing to consider using FiberNet's advanced telecommunications service offerings only to have further consideration of FiberNet's services halted due to the perception that Verizon-WV, through contracts initially executed long before the passage of the Telecommunications Act of 1996, had an exclusive right to the continuation of that business.

Like the clearly anti-competitive "win back" activities that Verizon-WV has engaged in that were discussed in FiberNet's initial comments, this way of doing business wherein the State of West Virginia's telecommunications business is perceived to be the exclusive province of an entrenched monopoly provider like Verizon-WV clearly runs afoul of the spirit of the Telecommunications Act. Unless and until Verizon-WV cleans up its act and discontinues these clearly unethical and anti-competitive actions, it should not be deemed to be in compliance with Section 271 of the Act.

## **IX. Conclusion**

FiberNet has struggled mightily for more than three years to provide small and medium size business customers in West Virginia with a facilities-based alternative for local exchange services. That struggle continues on a daily basis, and is made all the more difficult when the monopoly provider of an essential component manipulates its dominate market position to deny FiberNet with reasonable and non-discriminatory access to essential wholesale services. FiberNet respectfully urges the Commission to cast aside Verizon-WV's claim that all is well in West Virginia, and to thoroughly examine the true state of the development of local exchange competition in West Virginia, and why there is such a nominal level of local exchange competition in West Virginia today over six years after the passage of the Telecommunications Act of 1996. FiberNet requests that the Commission carefully scrutinize Verizon-WV's application and ensure that only until the problems identified in its initial and reply comments are adequately addressed and remedied should Verizon-WV be permitted to enter the long distance market in West Virginia pursuant to Section 271 of the Act.

Respectfully submitted this 31<sup>st</sup> day of January, 2003.

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